

Center for Quality Health Care Services and Consumer Protection

Code of Virginia
Home Care Organization Licensing

§ 32.1-162.7. Definitions. - As used in this article:

"Health care professional" means any professional who is licensed, certified or registered to practice by a board within the Department of Health Professions under Title 54.1 or is licensed, certified or registered by a nationally recognized professional organization specified in Board regulations.

"Home care organization" means a public or private organization, whether operated for profit or not for profit, that provides, at the residence of a patient or individual in the Commonwealth of Virginia, one or more of the following services:

1. Home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions;

2. Personal care services, including assistance in personal care to include activities of daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury or disabling condition; or

3. Pharmaceutical services, including services provided in a patient's residence, which include the dispensing and administration of a drug or drugs, and parenteral nutritional support, associated patient instruction, and such other services as identified by the Board of Health by regulation.

"Person" includes any partnership, corporation, association or other legal entity, public or private.

"Residence" means the place where the individual or patient makes his home such as his own apartment or house, a relative's home or an assisted living facility, but shall not include a hospital, nursing facility or nursing home or other extended care facility. (1986, c. 633; 1991, c. 695; 1993, cc. 957, 993.)

§ 32.1-162.8. Exemptions from article. - The provisions of this article shall not be applicable to:

1. A natural person who provides services to a patient or individual on an individual basis if such person is (i) acting alone under a medical plan of care and is licensed to provide such services pursuant to Title 54.1 or (ii) retained by the individual or by another individual acting on the individual's behalf.

2. Any organization providing only housekeeping, chore or beautician services.

3. Any home care organization located in the Commonwealth that is:

a. Certified by the Department of Health under provisions of Title XVIII or Title XIX of the Social Security Act;

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b. Approved for payments for home health or personal care by the Department of Medical Assistance Services;

c. Accredited by the Joint Commission on Accreditation for Health Organizations, the National League of Nursing or the National Home Caring Council; or

d. Licensed for hospice services under Article 7 (§ 32.1-162.1 et seq.) of this chapter. (1986, c. 633; 1991, c. 695; 1995, c. 455; 2001, c. 515.)

§ 32.1-162.9. Licenses required; renewal thereof. - A. No person shall establish or operate a home care organization without a license issued pursuant to this article unless he is exempt from licensure pursuant to § 32.1-162.8.

B. The Commissioner shall issue or renew a license to establish or operate a home care organization upon application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner finds that the home care organization is in compliance with the provisions of this article and regulations of the Board, unless the Commissioner determines that no reciprocal agreement for the licensing of home care organizations has been entered into by the Commonwealth with the state in which the applicant resides or with the state in which the applicant's home care organization is licensed to operate.

C. Every such license shall expire on the anniversary of its issuance or renewal.

D. The activities and services of each applicant for issuance or renewal of a home care organization license shall be subject to an inspection or examination by the Commissioner to determine if the home care organization is in compliance with the provisions of this article and regulations of the Board.

E. No license issued pursuant to this article may be transferred or assigned. (1986, c. 633; 1991, c. 695; 1994, c. 902.)

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license. - A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection

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A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified

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nurse aide program operated by such home care organization or hospice. (1992, c. 844; 1993, cc. 17, 657; 1999, c. 637; 2003, c. 517.)

§ 32.1-162.10. Inspections. - The Commissioner may cause each home care organization licensed under this article to be periodically inspected at reasonable times.

Notwithstanding the foregoing or any other provision of this article, any home care organization which has obtained accreditation or has been certified as provided in subdivision 3 of § 32.1-162.8 may be subject to inspection so long as such accreditation or certification is maintained but only to the extent necessary to ensure the public health and safety. (1986, c. 633; 1991, c. 695.)

§ 32.1-162.11. Liability insurance and surety bond required. - The Board shall establish liability insurance and surety bond requirements adequate to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of home care organizations. Every licensee shall maintain in force such liability insurance and surety bond requirements as the Board establishes. Failure to maintain these requirements shall result in revocation of the license. (1986, c. 633; 1991, c. 695.)

§ 32.1-162.12. Regulations. - The Board shall prescribe such regulations governing the activities and services provided by home care organizations as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, an informed consent contract, the qualifications and supervision of licensed and nonlicensed personnel, a complaint procedure for consumers, the provision and coordination of treatment and services provided by the organization, clinical records kept by the organization, utilization and quality control review procedures and arrangements for the continuing evaluation of the quality of care provided. Regulations shall be appropriate for the categories of service defined in § 32.1-162.7. (1986, c. 633; 1991, c. 695.)

§ 32.1-162.13. Revocation or suspension of license. - A. The Commissioner is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with the regulations of the Board.

B. If a license is revoked as herein provided, the Commissioner may issue a new license upon application therefor if, when, and after the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Whenever a license is revoked or suspended the Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the home care organization is located for an injunction to cause such home care organization to cease providing services.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such

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time as the Commissioner determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation. (1986, c. 633; 1991, c. 695.)

§ 32.1-162.14. Repealed by Acts 2003, c. 449.

§ 32.1-162.15. Violation; penalties. - Any person owning, establishing, conducting, maintaining, managing or operating a home care organization which is not licensed as required by this article shall be guilty of a Class 6 felony. (1991, c. 695.)